IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALFRED ROGERS,	§	
	§	No. 542, 2005
Plaintiff Below,	§	
Appellant/Cross-Appellee.	§	Court Below: Superior Court of the
	§	State of Delaware in and for New
v.	§	Castle County
	§	
DELAWARE STATE UNIVERSITY, a Delaware Corporation,	§	C.A. No. 03C-03-218
	§	
	§	
Defendant Below,	§	
Appellee/Cross-Appellant.	§	

Submitted: May 24, 2006
Decided: July 25, 2006

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

O R D E R

This 25th day of July 2006, upon consideration of the briefs of the parties and their contentions at oral argument, it appears to the Court that:

(1) The plaintiff-appellant, Alfred Rogers appeals the Superior Court's entry of summary judgment in favor of defendant-appellee, Delaware State University ("DSU"). DSU cross-appeals the Superior Court's ruling that DSU is not protected by the State's sovereign immunity or the State Tort Claims Act. We affirm the Superior Court's ruling on DSU's cross-appeal and it's entry of summary judgment in favor of DSU on Rogers breach of contract claim. Because

the material issues of fact exist on Rogers' negligence claim, we reverse the summary judgment against Rogers and remand this matter for further proceedings.

(2) Alfred Rogers was a student at DSU. Due to a shortage of on-campus housing, DSU offered Rogers, along with other students, a room at the Dover Inn until student housing opened on campus. The Dover Inn is a motel that is not located on the DSU campus. Rogers conceded that DSU did not tell him that it would provide security off campus, and that he had no express contract that DSU would provide security at the Dover Inn. DSU security officers and DSU police officers periodically visited on-campus housing and monitored criminal activity around campus. DSU did not conduct any security risk assessment of Dover Inn before placing students there and did not provide any security measures, orientation or training for the students who lived there. Plaintiff's expert witness opined that DSU failed to follow usual and customary student safety and security measures for its students including the use of security guards and patrols.[1]

(3) On March 23, 2001, Rogers' friend, Chemica Wyche, approached him while he was in the parking lot of the Dover Inn. Wyche explained to Rogers that her ex-boyfriend, Michael Denby, was following and chasing her. While Wyche

[1] DSU challenges the admissibility of this expert testimony on appeal and argues that the opinion lacks a proper foundation. Rogers objects to DSU's argument because it was not "fairly presented" to the Superior Court as required by Supreme Court Rule 8. He further proffers that his expert witness has 46 years of experience in security risk management and assessment. We find no ruling of the Superior court excluding this proffered testimony and will not address DSU's objection in this appeal.

was sitting in Rogers' car, Denby drove into the parking lot and got out of his car yelling and screaming and motioning for Wyche to get out of the car. Rogers took Wyche to a police station. Upon returning to the Dover Inn at approximately 11:45 p.m., Rogers was attacked in the parking lot of the motel while in his vehicle. He was shot in the face by an assailant whom Rogers identified as Denby.

(4) Rogers sued DSU for negligence, gross negligence, breach of contract and detrimental reliance. The Superior Court ruled: (a) the attack on Rogers was neither foreseeable nor preventable, and (b) DSU's failure to provide security patrols was not the proximate cause of Rogers' injuries. These conclusions were contrary to the expert opinion that Rogers proffered in this case. After finding that there was no genuine issue of material fact, the Superior Court granted DSU's motion for summary judgment as a matter of law.

(5) Rogers claims that the Superior Court erred when it granted DSU's motion for summary judgment because there were genuine issues of material fact regarding: (a) whether the attack was reasonably foreseeable, (b) whether the lack of security was the proximate cause of Rogers's injuries, and (c) whether DSU had a contractual obligation to provide security at Dover Inn on which Rogers relied.

On cross-appeal, DSU claims that it is protected by the State's sovereign immunity[2] or the State Tort Claims Act.[3]

(6) Summary judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[4] We review questions of law *de novo*.[5]

(7) We will first address DSU's cross appeal because if DSU cannot be sued then all other issues are moot. DSU argues that it is protected by the State's sovereign immunity, and alternatively the State Tort Claims Act. After a careful and comprehensive analysis of the Delaware Constitution, relevant statutes, and case law the Superior Court found no merit to these claims.[6] We agree and affirm on the basis of the Superior Court's well-reasoned opinion on these claims.

(8) Rogers' argues that the Superior Court erred when it focused on the unique characteristics of the attack and ruled that because the attack was a targeted one, it was unforeseeable as a matter of law. In *Peterson v. Delaware Food Corporation* this Court reversed and remanded on a similar issue, holding that questions of foreseeability are jury questions and the unique characteristics of the

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[2] *See, e.g.*, *Wilmington Hous. Auth. v. Williamson*, 228 A.2d 782, 786 (Del. 1967) ("The doctrine of sovereign immunity to suit is written into the Constitution of Delaware by Article I, § 8, Del.C.Ann. It is an absolute bar to all suits against the State unless by legislative act the General Assembly has waived the immunity.").
[3] 10 Del. C. § 4001 *et seq.*
[4] Del. Super. Ct. Civ. R. 56.
[5] *Motorola, Inc. v. Amkor Technology, Inc.*, 849 A.2d 931, 935 (Del. 2004).
[6] *Rogers v. Delaware State University*, 2005 WL 2462271 (Del. Super. 2005).

particular assault should not be considered over other facts.[7] Here, the Superior Court weighed facts regarding foreseeability that it should have submitted to a jury. Because material issues of fact exist in this case, the summary judgment in favor of DSU on the issue of foreseeability must be reversed.

(9) Rogers' second claim is that summary judgment was not appropriate to resolve the question of whether DSU's failure to provide security at the Dover Inn was the proximate cause of his injuries. Rogers contends that there is a genuine issue of material fact on the proximate cause of his injuries. The Superior Court held as a matter of law that no reasonable jury could find that the absence of security patrols was a proximate cause of Rogers' injuries. There can be more than one proximate cause of injury. Based on our review of the record, we conclude that there are material facts in dispute in this case. When the evidence is viewed in the light most favorable to Roger's, a reasonable juror could conclude that the failure of DSU to follow usual and customary student safety and security measures was a proximate cause of Rogers' injuries. The Superior Court erred when it granted summary judgment on the issue of proximate cause.

[7] *Peterson v. Delaware Food Corporation*, Del. Supr., C.A. No. 97C-07-050, Steele, J., (Dec. 6, 2001, 2001 WL 1586831 at *2. ("In determining whether there is sufficient evidence to submit a matter to the jury, 'it is improper for the trial judge to weigh the facts or pass on the credibility of the witnesses.' Given the testimony … and given that questions of whether a standard of care has or has not been met are ordinarily jury questions, the trial judge should have submitted the factual issues relating foreseeability to the jury.") (citation omitted).

(10) Rogers' final claim is that it is an issue of fact for the jury whether DSU was contractually obligated to provide security personnel at Dover Inn and whether he relied on that contract. We disagree. Rogers' argument relies on the implied contract term discussed in *Furek v. University of Delaware*.[8] This Court's holding in *Furek* recognized that security is among the contractual duties a university provides to its students in part because of an express anti-hazing policy.[9] We decline to expand the scope of this rule to the circumstances here. Although DSU has a duty to exercise reasonable care when it undertakes to provide housing off campus for its students, this was not a contractual duty. We affirm the entry of summary judgment on this claim.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court on cross-appeal is AFFIRMED and the judgment of the Superior Court on appeal is AFFIRMED in part and REVERSED in part. This matter is REMANDED to the Superior Court for further proceedings in accordance with this order.

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[8] *Furek v. University of Delaware*, 594 A.2d 506, 520 (Del. 1991)

[9] *Id.* (quoting *Mullins v. Pine Manor College*, 449 N.E.2d 331, 336 (Mass. 1983)) ("The University's policy against hazing, like its overall commitment to provide security on its campus, thus constituted an assumed duty which became 'an indispensable part of the bundle of services which colleges . . . afford their students.'").

BY THE COURT:

/s/ Henry duPont Ridgely
Justice